



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Earth Engineering and Sciences, Inc.--
Reconsideration

File: B-248219.2

Date: September 14, 1992

J. Patrick McMahon, Esq., for the protester,
Kimberly L. Frye, Esq., and Paul M. Fisher, Esq., Department
of the Navy, for the agency,
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

When determining feasibility of termination of a contract upon sustaining a protest, General Accounting Office, in absence of contrary indication in the record, properly considered performance schedule as a valid indication of the extent of likely contract performance.

DECISION

Earth Engineering and Sciences, Inc. (E2SI) requests reconsideration of our decision in Earth Eng'g and Sciences, Inc., B-248219, July 30, 1992, 92-2 CPD ¶ _____. In that decision, we sustained E2SI's protest that the agency had improperly rejected as materially unbalanced its apparent low bid for the removal and disposal of hazardous waste and hazardous waste residues and for the closure of a building at the Naval Air Station, Willow Grove, Pennsylvania. We determined that since the contract had been substantially performed, the agency should award E2SI its reasonable bid preparation costs and its reasonable costs of filing and pursuing its protest, including attorneys' fees.

In its request for reconsideration, E2SI disagrees with our conclusion that the contract had been substantially performed and maintains that our Office should have recommended that the agency terminate for convenience the awardee's contract and award the contract to E2SI.

The award was made on March 30, 1992. Based on the revised closure schedule outlined in attachment J-C4 of amendment No. 0004 of the solicitation, which required that the contract be completed within 119 calendar days of award, we


concluded that by July 30, the date our decision was issued, the contract would be substantially, if not completely, performed.¹ Therefore, we determined that termination of the awardee's contract and an award to E2SI was not an appropriate remedy and that the protester was only entitled to its bid preparation and protest costs.

E2SI asserts that there was no evidence of record to support our conclusion. E2SI states that the solicitation schedule, by itself, was not a sufficient basis to support the conclusion that substantial performance had taken place.

We do not agree. We have long viewed the performance schedule as a valid indicator of the extent of likely contract performance when considering whether termination of a contract was feasible. See, e.g., Detyens Shipyards, Inc., 71 Comp. Gen. 101 (1991), 91-2 CPD ¶ 500, rev'd on other grounds, Department of the Navy--Recon., B-244918.3, July 6, 1992, 92-2 CPD ¶ ____; Stocker & Yale, Inc.--Recon., B-242568.2, Oct. 28, 1991, 91-2 CPD ¶ 379. Therefore, in the absence of a contrary indication in the record, we considered the performance and closure schedule here to be an appropriate basis for reaching our conclusion.

While E2SI disagrees, that is not a sufficient basis for reconsideration of our decision. Interior Elements, Inc.--Recon., B-238117.2, Aug. 7, 1990, 90-2 CPD ¶ 139; R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Accordingly, the request for reconsideration is denied.


Ronald Berger
Associate General Counsel

¹In response to this request for reconsideration, the agency has advised that although additional time for performance has been required, full building closure is expected no later than the end of September.